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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARCUS WEBB,

11 CIV 7517 (JSR)

Plaintiff

-against-

SYLVESTER STALLONE, et al.,

Defendants.  
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**DECLARATION OF  
SYLVESTER STALLONE  
IN SUPPORT OF DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT**

SYLVESTER STALLONE declares as follows:

1. I am a defendant in the above-captioned action. I submit this declaration in support of the defendants' motion for summary judgment. I am personally familiar with the matters hereinafter set forth, except as may be otherwise indicated.
2. I directed, starred in and wrote the final screenplay for the motion picture entitled "The Expendables" (the "Film"). My involvement with the Film began in 2008, when I told my agents that I was interested in doing an action-oriented ensemble film. I reviewed several scripts which my associate and producer, Kevin King Templeton, said he had been given by my agency, the William Morris Agency.
3. I ultimately decided that I liked one of these scripts, a screenplay entitled "Barrow" by David Callaham ("Callaham"), which concerned a group of highly-trained American

mercenaries being hired to topple the oppressive dictator of a small Latin American island.<sup>1</sup> I had become interested in the mercenary theme during my work on the last “Rambo” film, which also had mercenaries in the plot and which had been released by Nu Image earlier that year. Over a period of several months, I had discussions with Nu Image, which expressed interest in developing this project with me, and I undertook a number of rewrites of Callaham’s “Barrow” screenplay. In those re-writes, I kept Callaham’s story about a group of highly-trained mercenaries overthrowing the dictator of a Latin American island. Within that story, there were elements changed from Callaham’s script. However, examples of elements which remained, and the modifications I made to them, include the following:

a. The team of mercenaries is introduced in the opening scene with a hostage rescue. Because of frequent references to Somalian pirates in the news at the time, I moved the setting of the hostage rescue from Iraq, where Callaham’s script had set it, to a cargo ship which had been taken over by Somalian pirates.

b. The leader of the mercenaries is a middle-aged, former “special ops”-type military veteran. While Callaham had already portrayed this figure as somewhat isolated, I made him even more isolated by dropping the character of his daughter, leaving him without any family or friends other than his fellow mercenaries. (Dropping the daughter also enabled me to delete scenes in which he visited his daughter at Dartmouth College, which I wanted to do both to make the Film more purely action-oriented and because of budget considerations.)

c. The mercenaries are offered a substantial sum to overthrow the oppressive military dictator of a small Latin American island.

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<sup>1</sup> A copy of that script is at Exhibit “C” to the Answer to Second Amended Complaint.

d. An ominous character who is somehow affiliated with the CIA is often at the dictator's side. Callaham called this character "Ballcap," a CIA operative on the island who reported to an arrogant, corrupt CIA agent named "Murali," who was at CIA headquarters in Langley, Virginia. In the Film, the "Paine" character (played by Steve Austin) was based on "Ballcap," and I changed his CIA superior ("Monroe" in the Film) by moving him to the island.<sup>2</sup>

e. A female character who is the daughter of a prominent character on the island who is sympathetic to the mercenaries' mission and serves as their guide around the island and motivation for their return. Callaham's character ("Sophie") was the daughter of a local physician named "Dr. Adoti," but when I dropped the Dr. Adoti character in order to streamline the script, I made this character ("Sandra" in the Film) the dictator's daughter because I liked the irony of having the daughter figure serve as the foil to the father's moral bankruptcy.

f. I retained the idea of the leader of the mercenaries wanting to topple the dictator because he thought it was a righteous cause. However, I changed this from "Barrow," in which the protagonist indicates from the beginning that he only pursues righteous causes, by portraying my character, "Barney Ross," as a man who is interested only in the money at the Film's beginning, but is moved by the plight and courage of the female character on the island into realizing there are things more important than money.

g. At the end of the story, the mercenary leader, having succeeded in toppling the dictator, leaves the substantial sum he was paid for the mission in the hands of the sympathetic female character.

h. I, of course, retained the essential, standard elements of the genre, such as numerous fight scenes, with massive shootouts and explosives.

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<sup>2</sup> In the Film, the corrupt and evil Monroe is no longer with the CIA.

4. My objective in making changes in my rewrites was in part to write characters for actors who had expressed interest in appearing in the Film - such as Jason Statham and Jet Li (both of whom signed on to the project fairly early on) - and in even larger part to make the Film as action-oriented as I could, which required dropping sub-plots and characters which I felt detracted from that action.<sup>3</sup> Another objective was to make the characters' names easy to remember. For several of the characters, I drew on names that were familiar to me. For example, I named Jason Statham's character "Lee Christmas," which was the name of a real American mercenary who fought in Latin America a century ago. As a fan of boxing, I was drawn to some boxers' names for two other characters. I didn't think that Callahan's name for the central character, "Barrow Miles," was memorable, so for my character, "Barney Ross," I used the name of a boxer - an Orthodox Jew who adopted the name "Barney Ross" and became a boxing champion. I also thought that Callahan's name for the dictator - "General Miramonte" - was too long and difficult to remember, so in looking for a shorter name that would be easier to remember, I turned to the name of another boxer, Jaime Garza. After concluding that "Jaime" was not a great name for a dictator, I initially changed the general's name to "Ruben Garza," but I think that by the time the Film was final, he was known only as "General Garza." Other characters' names were chosen because they were just easy to remember - such as "Paine," because he inflicts pain.<sup>4</sup>

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<sup>3</sup> As noted above, I also had concerns about the Film's budget. At one point, Nu Image brought in screenwriter Robert Kamen, who had written the "Transporter" films and "Taken," to help me pare down the script. While working together, we dropped the sub-plot (which had come from Callahan's draft) of the "good" CIA agents who are pursuing the leader of the mercenaries, which involved numerous scenes at CIA headquarters and other locations on the U.S. mainland, because we felt these scenes detracted from the Film's action.

<sup>4</sup> Jet Li's character is "Yin Yang," Randy Couture's was "Toll Road," and Terry Crews' was "Hale Caesar." All of the mercenaries' names were supposed to be assumed names.

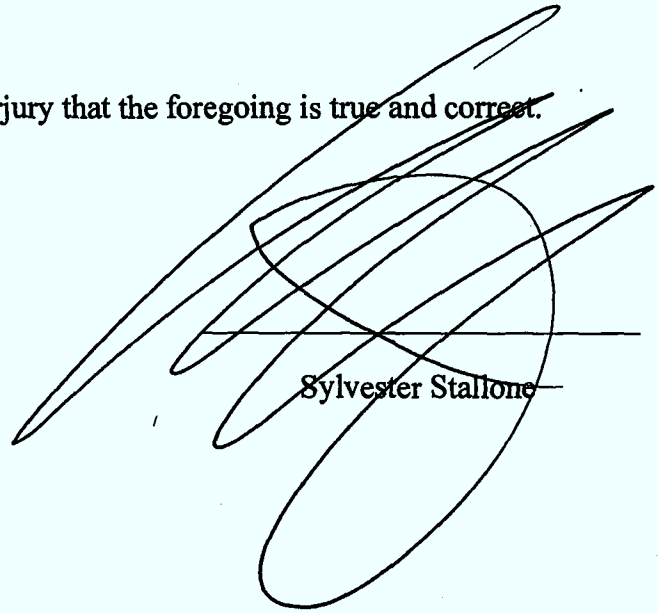
5. Another one of my objectives was to give my character and the characters of the two stars who had first signed on to the film - Jason Statham and Jet Li - interesting elements to their character arcs. For Statham's character, Lee Christmas, I developed a side story involving a girlfriend ("Lacy") who takes up with another man while Christmas is away. Since the Christmas character is otherwise strictly business and a brutal fighter, I showed his pain at having been dropped by Lacy and then, when he learns that Lacy's new man has physically abused her, I showed Christmas teaching him a lesson in the way Christmas knows best. For Jet Li's character, Yin Yang, there is regular dialogue about his shorter stature and his requests to be paid more because he claims he has to work harder than the other mercenaries because he is smaller. With respect to my character, I gave Barney Ross an element of moral growth. As noted above, at the beginning of the Film Barney's instincts are, fittingly, purely mercenary, and he is interested only in the money being offered for a job. However, after the initial reconnaissance mission to the island with Christmas, in which the female character refuses to leave the island with Barney and Christmas despite the threat of harm, Barney is moved by a story from his friend "Tool," played by Mickey Rourke. Tool tells Barney about a woman he failed to save from suicide during the Bosnian civil war, noting that if he had saved her, he might have saved his soul. After pondering this, Barney is a changed man, and decides there are more important things than money to be had in toppling the island's dictator.

6. I understand that the plaintiff Marcus Webb believes that the Film is similar to a work he wrote entitled "The Cordoba Caper," and he apparently believes that the Film somehow copied his work. I had never heard of either Mr. Webb or "The Cordoba Caper" before this case, and I have never seen or read "The Cordoba Caper" to this day. I do not know how Mr. Webb imagines that I might have seen his work, but it simply never happened. Precisely because

claims like this are not uncommon in the entertainment business, I have a policy of never accepting unsolicited scripts or other materials. I only review scripts that are submitted to me by my agents, just as Callaham's script was provided by the William Morris Agency.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 12, 2012.



Sylvester Stallone